Filed 5/11/18 P. v. Cardenas CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. SANTIAGO CARDENAS, Defendant and Appellant.	D072269 (Super. Ct. No. SCD270379)

APPEAL from a judgment of the Superior Court of San Diego County, Michael S. Groch, Judge. Affirmed.

Kent D. Young, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Elizabeth M. Renner, Deputy Attorneys General, for Plaintiff and Respondent.

I.

INTRODUCTION

Defendant Santiago Cardenas pled guilty to one count of felony assault with force likely to cause great bodily injury and one count of attempted unlawful taking of a vehicle. The trial court placed Cardenas on formal probation for a period of three years. On appeal, Cardenas challenges nine of the probation conditions that the court imposed (conditions 6e, 6k, 6n, 6r, 9a, 10g, 11a, and 11b), on a variety of grounds. Cardenas objected to only two of these nine conditions in the trial court, and, as to those two, raised no constitutional objection. Instead, he contended only that imposition of those conditions was unreasonable, given the circumstances of his crime and his criminal history. We conclude that Cardenas has forfeited a number of his challenges to the probation conditions. We further conclude that his nonforfeited contentions are without merit. We therefore affirm the judgment of the trial court.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Factual background*

Cardenas walked into a liquor store and took a bottle of liquor off a shelf, put it in his pocket, and walked out of the store. A clerk followed Cardenas out of the store and stopped him at a bus stop in an attempt to recover the liquor bottle. Cardenas threw punches at the clerk but was unable to connect. The two men then engaged in a physical altercation. Cardenas attempted to escape the situation by running to a nearby occupied vehicle and opening a passenger side door. The driver of the vehicle tried to push

Cardenas out of the vehicle while the clerk attempted to pull him out. The clerk sustained injuries to his face, including a bloody nose, a cut lip, and a bruised forehead.

Cardenas met with a probation officer via teleconference in April 2017. He acknowledged a criminal history beginning with misdemeanor convictions in Texas in 2011. He has been a transient since the age of 23, and suffers from mental issues, including schizophrenia, anxiety, and depression. Cardenas has abused a number of substances, including marijuana, methamphetamine, and heroin. He acknowledged that he was under the influence of methamphetamine and heroin at the time he committed the charged offenses. He told the probation officer that he has never received treatment for substance abuse problems, and questioned whether such treatment would benefit him. The probation department utilized the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) assessment tool and concluded that Cardenas is "likely to have a better chance of success in the community if he[ ] is managed on formal probation with intensive monitoring and case planning to address identified needs."

B. *Procedural background*

On April 12, 2017, Cardenas pled guilty to one count of felony assault with force likely to cause great bodily injury and one count of attempted unlawful taking of a vehicle. The balance of the other charges against him were dismissed. The plea agreement provided that Cardenas would be granted formal probation, and that the court would consider imposing a sentence ranging from 180 to 365 days, which could be served either in local custody or in an alternative to local custody.

The trial court ordered Cardenas to serve three years of formal probation. The court further ordered that Cardenas serve 365 days in local custody, with release on work furlough, if eligible.

Cardenas filed a timely appeal.

III.

DISCUSSION

Cardenas challenges a number of the conditions of probation that the court imposed, on various and multiple grounds. For example, Cardenas challenges condition 6k[1] on vagueness grounds, and challenges condition 10g[2] on overbreadth grounds. Cardenas challenges conditions 6e,[3] 6n,[4] 11a,[5] and 11b,[6] on both vagueness and overbreadth grounds. Further, Cardenas contends that six of the probation conditions—

---

1 Condition 6k requires that Cardenas "[p]rovide true name, address, and date of birth if contacted by law enforcement" and to "[r]eport contact or arrest in writing to the P.O. within 7 days," including "the date of contact/arrest, charges, if any, and the name of the law enforcement agency."

2 Condition 10g requires that Cardenas "[o]btain P.O. approval as to" his residence and employment.

3 Condition 6e requires that Cardenas "[c]omply with a curfew if so directed by the P.O."

4 Condition 6n requires that Cardenas "[s]ubmit person, vehicle, residence, property, personal effects, computers, and recordable media _____ to search at any time with or without a warrant, and with or without reasonable cause, when required by P.O. or law enforcement officer."

5 Condition 11a requires that Cardenas "[p]articipate in Global Position System (GPS) monitoring . . . if directed by a P.O."

6 Condition 11b requires that Cardenas "[c]omply with all zone and curfew restrictions, GPS charging requirements and equipment care" if he is directed to participate in the GPS monitoring program.

conditions 6e, 6r,[7] 7b,[8] 9a,[9] 11a, and 11b—"impermissibly delegate judicial authority to the probation officer." (Formatting omitted.)

The only conditions to which Cardenas raised any objection in the trial court are 11a and 11b, to which he raised only a *Lent*[10] reasonableness objection, but no constitutional objection. He accepted without objection all of the other conditions of probation. Challenges to probation conditions ordinarily must be raised in the trial court; if they are not, appellate review of those conditions will be deemed forfeited. (*People v. Welch* (1993) 5 Cal.4th 228, 234–235 [extending the forfeiture rule to a claim that probation conditions are unreasonable, when the probationer fails to object on that ground in the trial court].) However, a defendant who did not object to a probation condition at sentencing may raise a challenge to that condition on appeal if the defendant's appellate claim "amount[s] to a '*facial* challenge' " (italics added), i.e., a challenge that the "phrasing or language . . . is unconstitutionally vague and overbroad," and the determination whether the condition is constitutionally defective "does not require scrutiny of individual facts and circumstances but instead requires the review of abstract and generalized legal concepts—a task that is well suited to the role of an appellate court." (*In re Sheena K.* (2007) 40 Cal.4th 875, 885 (*Sheena K.*).)

---

7 Condition 6r requires that Cardenas "[p]articipate and comply with any assessment program if directed by the P.O."

8 Condition 7b requires that Cardenas "[p]articipate in treatment, therapy, counseling, or other courses of conduct as suggested by validated assessment tests."

9 Condition 9a, which is located under the heading "DRUG CONDITIONS," requires that Cardenas "[c]omplete a program of residential treatment and aftercare . . . if directed by the probation officer."

10 *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*).

Because Cardenas did not object in the trial court, he has forfeited any as applied constitutional objections on appeal. We therefore address Cardenas's constitutional challenges only to the extent that they " 'present "pure questions of law that can be resolved without reference to the particular sentencing record developed in the trial court." ' " (*Sheena K.*, *supra*, 40 Cal.4th at p. 889.)

Further, as we discuss in section III.F, *post*, we decline to consider Cardenas's constitutional challenge to probation conditions 6e, 6r, 7b, 9a, 11a, and 11b, on the ground that they constitute impermissible delegations of judicial authority to a probation officer. Because Cardenas accepted these conditions without objection, he failed to provide the trial court with an opportunity to address his concerns. Although it could be argued that such challenges constitute facial constitutional challenges, and that we therefore could exercise our discretion to consider these claims (see *Sheena K.*, *supra*, 40 Cal.4th at p. 889), we decline to do so under the circumstances.

A. *Conditions 11a and 11b—reasonableness, vagueness, and overbreadth*

Cardenas challenges condition 11, which includes two separate but related conditions (11a and 11b), as unreasonable, under *Lent*, *supra*, 15 Cal.3d 481. He further challenges these conditions on vagueness and overbreadth grounds.[11]

Condition 11a requires that Cardenas "[p]articipate in Global Positioning System (GPS) monitoring . . . if directed by a P.O."[12] Condition 11b requires that Cardenas

---

11 Cardenas also argues that conditions 11a and 11b improperly delegate the court's judicial authority to a probation officer. We address this contention later in this opinion.

"[c]omply with all zone and curfew restrictions, GPS charging requirements and equipment care" if he is directed to participate in the GPS monitoring program. According to Cardenas, these conditions are unrelated to his underlying crime, relate to conduct that is not itself criminal, and are not reasonably related to future criminality. Cardenas also argues that the conditions are vague and overbroad because they implicate his constitutional rights to travel and association, and leave him to speculate as to their requirements because they contain "undefined rules and restrictions of an electronic monitoring program." Cardenas maintains that he "can only guess at what the terms of the GPS monitoring are."

At sentencing, Cardenas's attorney objected to the imposition of condition "11. CONTINUOUS ELECTRONIC MONITORING/GPS," which consists of conditions 11a, 11b, and 11c, stating, "I'm asking that [condition 11] not be imposed. I don't think there's a nexus in this case given the facts and circumstances of this case. [¶] Mr. Cardenas is 25. Again, he was extremely remorseful. There is no conduct in this case that I think would justify a GPS device." Defense counsel did not state any further objection with respect to the GPS-related conditions. In response, a probation department representative noted that because Cardenas is a transient, in order "to assist supervision, probation is asking for a GPS."

When an offender accepts a probationary sentence, thereby avoiding incarceration, state law authorizes the sentencing court to impose conditions on such release as are

---

12 The condition provides two options, each with a box next to it for the court to mark to indicate which selection the court is making—that the probationer participate in the GPS monitoring "as mandated by PC1202.8(b)" or "if directed by a P.O."

"fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and . . . for the reformation and rehabilitation of the probationer." (Pen. Code, § 1203.1, subd. (j).) Accordingly, "[i]n granting probation, courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety . . . ." (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) The broad discretion granted to trial courts to impose probation conditions "is not without limits," however; "a condition of probation must serve a purpose specified in the statute," and conditions regulating noncriminal conduct must be " 'reasonably related to the crime of which the defendant was convicted or to future criminality.' " (*Id.* at p. 1121.) Therefore, a condition of probation is generally "invalid [only if] it '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality.' " (*Lent, supra*, 15 Cal.3d at p. 486.) "This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term." (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*).) We review the reasonableness of a probation condition imposed by the trial court for an abuse of discretion. (*Ibid.*)

Cardenas challenges the reasonableness of the GPS monitoring condition, as well as the GPS attendant curfew and zone requirements, when the record does not disclose that he is currently subject to GPS monitoring. Cardenas's arguments regarding the reasonableness of requiring him to wear a GPS monitor and to follow the rules of the

GPS monitoring program are premature, given that there is no indication that he is currently subject to GPS monitoring.

For this same reason, Cardenas's contentions that these conditions are vague and overbroad are also premature.[13] Again, there is no indication that a probation officer has directed Cardenas to participate in GPS monitoring, or that he is presently subject to any curfew or zone restrictions. As a result, the record does not demonstrate that he has been directed to follow any rules or regulations that he has not been informed of or provided.

B. *Condition 6k—vagueness*

Cardenas contends that condition 6k is vague. Condition 6k requires that Cardenas "[p]rovide true name, address, and date of birth if contacted by law enforcement" and to "[r]eport contact or arrest in writing to the P.O. within 7 days," including "the date of contact/arrest, charges, if any, and the name of the law enforcement agency."

"[T]he underpinning of a vagueness challenge is the due process concept of 'fair warning.' [Citation.] The rule of fair warning consists of 'the due process concepts of preventing arbitrary law enforcement and providing adequate notice to potential offenders' [citation], protections that are 'embodied in the due process clauses of the federal and California Constitutions. (U.S. Const., Amends. V, XIV; Cal. Const., art. I,

---

13 To the extent that Cardenas is arguing that condition 11a is unconstitutionally vague as it is currently written, without concern as to whether he has been directed to participate in GPS monitoring, we reject such an argument. The condition is clearly not vague. It requires that Cardenas comply with the rules and regulations of the GPS monitoring program if he is directed by a probation officer to participate in the program. This is not ambiguous.

§ 7).' [Citation.]" (*Sheena K., supra*, 40 Cal.4th at p. 890.) "A probation condition 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,' if it is to withstand a challenge on the ground of vagueness." (*Ibid.*) Probation conditions are given " ' "the meaning that would appear to a reasonable, objective reader." ' " (*In re I.V.* (2017) 11 Cal.App.5th 249, 261 (*In re I.V.*).)

Cardenas relies on *People v. Relkin* (2016) 6 Cal.App.5th 1188 (*Relkin*), in support of his argument that condition 6k is unconstitutionally vague. The *Relkin* court considered a probation condition that required the defendant "to 'report to the probation officer, no later than the next working day, any arrests or any contacts with or incidents involving any peace officer.' " (*Id.* at p. 1196.) The defendant argued that the phrases " 'contacts with' and 'incidents involving' peace officers are uncertain because one cannot determine whether those terms include occasional conversation with a police officer who lives down the street, answering an officer's questions as a witness to a crime, or participation in a demonstration where officers are present." (*Id.* at pp. 1196–1197.) The defendant also contended that the condition suffered from vagueness "because it is subject to the ' "whim of any police or probation officer," ' and unconstitutionally infringes on [the defendant's] rights under the First Amendment of the United States Constitution." (*Id.* at p. 1197.)

The *Relkin* court determined that the condition was vague, but only in part. Specifically, the *Relkin* court concluded that "the portion of the condition requiring that defendant report 'any contacts with . . . any peace officer' " was vague because it "does

indeed leave one to guess what sorts of events and interactions qualify as reportable." (*Relkin*, *supra*, 6 Cal.App.5th at p. 1197.) According to the *Relkin* court, it was not certain that the condition would not be triggered "when defendant says 'hello' to a police officer or attends an event at which police officers are present, but would be triggered if defendant were interviewed as a witness to a crime or if his 'lifestyle were such that he is present when criminal activity occurs,' " as the People had argued on appeal. (*Ibid.*) "The language does not delineate between such occurrences and thus casts an excessively broad net over what would otherwise be activity not worthy of reporting." (*Ibid.*)

In contrast to the condition at issue in *Relkin*, condition 6k's requirement that Cardenas "[p]rovide true name, address, and date of birth if contacted by law enforcement" would appear to a reasonable, objective reader to refer to contacts initiated by a law enforcement officer in which the officer requests that information from Cardenas. This would not include mere greetings by law enforcement officers or conversations with officers at events attended by Cardenas. Further, the requirement that Cardenas report the "contact or arrest" and include the "name of the law enforcement agency" indicates that the interaction must be of the type and nature that either the law enforcement officer supplied that information to Cardenas, or that Cardenas was made aware of this information because the nature of the "contact" was sufficiently meaningful. This, too, indicates that a reasonable reading of the condition sufficiently delineates between casual, random interactions between Cardenas and a law enforcement officer, including the exchanging of pleasantries, and situations in which Cardenas is a witness to a crime or is specifically stopped and questioned by a law enforcement officer. The mere

fact that there " ' " 'may be difficulty in determining whether some marginal or hypothetical act is covered by [a condition's] language' " ' " does not render the condition "impermissibly vague." (*In re I.V.*, *supra*, 11 Cal.App.5th at p. 261.) We therefore reject Cardenas's vagueness challenge to condition 6k.

C. *Condition 10g—overbreadth*

Condition 10g requires that Cardenas "[o]btain P.O. approval as to" his residence and employment.[14] Cardenas argues that the requirement that he obtain approval from a probation officer as to his residence is overbroad and impermissibly infringes on his constitutional rights to travel and to free association.

Cardenas did not object to the imposition of condition 10g. We therefore will not consider the challenge to the extent that Cardenas attempts to rely on the record of conviction to assert that condition 10g is overbroad—i.e., we will not consider an as applied challenge. Rather, we will consider his claim only to the extent that it may be understood as asserting that the probation condition is facially overbroad and violates fundamental constitutional rights. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 888–889; *People v. Quiroz* (2011) 199 Cal.App.4th 1123, 1127 [forfeiture rule does not apply to defendant's contention that as a matter of law probation condition, on its face, is

---

14 The condition provides three options, each with a box next to it for the court to mark to indicate that the condition is being imposed: "residence," "employment" and "contact with your children." The boxes next to "residence" and "employment" are marked on the order granting Cardenas formal probation. Although both the "residence" and "employment" boxes are checked, Cardenas's argument on appeal is directed only to the residency approval portion of the condition; he makes no separate argument regarding the employment approval portion of the condition.

unconstitutionally vague and overbroad]; *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1347 (*Pirali*) ["[a]lthough a probation condition may be overbroad when considered in light of all the facts, only those constitutional challenges presenting a pure question of law may be raised for the first time on appeal"].)

"If a probation condition serves to rehabilitate and protect public safety, the condition may 'impinge upon a constitutional right otherwise enjoyed by the probationer, who is "not entitled to the same degree of constitutional protection as other citizens." ' " (*People v. O'Neil* (2008) 165 Cal.App.4th 1351, 1355.) A constitutionally overbroad condition is one that restricts a defendant's fundamental constitutional rights to a greater degree than necessary to achieve the condition's purpose. (*Olguin*, *supra*, 45 Cal.4th at p. 384.) The overbreadth doctrine requires that probation conditions, which may impinge on constitutional rights, be tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation. (*In re Victor L.* (2010) 182 Cal.App.4th 902, 910.) " 'The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.' [Citation.]" (*Pirali*, *supra*, 217 Cal.App.4th at p. 1346.)

A restriction requiring that a probation officer approve a defendant's residence clearly imposes a burden on that defendant's constitutional rights to associate and his right to intrastate and interstate travel. (*People v. Bauer* (1989) 211 Cal.App.3d 937, 944 (*Bauer*) [probation condition requiring that probation officer approve of residence

"impinges on constitutional entitlements—the right to travel and freedom of association"].) However, a probation condition may restrict these rights as long as it reasonably relates to reformation and rehabilitation. (*In re White* (1979) 97 Cal.App.3d 141, 146.)

Cardenas relies on *Bauer* to argue that a probation condition that grants a probation officer unfettered discretion to approve or disapprove of a probationer's residence is facially unconstitutional. *Bauer* involved a probationer's challenge to a condition nearly identical to the one here, which requires that Cardenas obtain his probation officer's approval of his place of residence. (*Bauer*, *supra*, 211 Cal.App.3d at pp. 943–945.) The *Bauer* court struck the condition, concluding that any requirement that the defendant obtain his probation officer's approval of his residence was an "extremely broad" restriction, and was not "narrowly tailored to interfere as little as possible" with the constitutional right of travel and to freedom of association. (*Id.* at p. 944.) Such a condition gave the probation officer the discretionary power to prohibit the defendant from living with or near whomever the probation officer chose—i.e., it gave the probation officer "the power to banish him." (*Ibid.*)

To the extent that Cardenas's argument may be considered to be a facial challenge to the residency-approval condition on overbreadth grounds, we reject this contention, and we take issue with Cardenas's reliance on *Bauer*. The *Bauer* court did not explain whether it was considering a facial or an as-applied challenge to the residency-approval condition at issue, and there is no mention in that case whether the defendant had raised an objection to the condition in the trial court. Although the *Bauer* court utilized broad

language, including language often used in the context of facial overbreadth analysis, to conclude that the residency-approval condition was unconstitutional in that case, it appears from the court's analysis that it made this determination only after a particularized assessment of the application of this condition to the specific circumstances of that defendant. In fact, the *Bauer* court's conclusory constitutional analysis followed discussion of the fact that there was "nothing in the probation report or otherwise a part of the record in this case suggesting in any way that appellant's home life (which is exemplary compared to that of most convicted felons) contributed to the crime of which he was convicted." (*Bauer*, *supra*, 211 Cal.App.3d at p. 944.) We are unconvinced that the *Bauer* court was truly considering whether this probation condition was unconstitutional *in every potential application*, as opposed to determining that it was unconstitutional *in its application to the particular defendant in that case*. For this reason, we read *Bauer* to hold, narrowly, that a residency-approval condition may not be constitutionally applied to a defendant where the record demonstrates that the defendant's rehabilitation would not be served by placing restrictions on his residency, given the specific nature of the offender and the nature of his offense.

Because we conclude that *Bauer* is not persuasive with respect to determining whether the challenged probation condition is facially overbroad, we next consider whether review of the residency approval condition in the abstract reveals that it is not sufficiently narrowly tailored to the state's legitimate purpose in imposing it. (See *Sheena K.*, *supra*, 40 Cal.4th at p. 885 [appellate claim that the language of a probation condition is unconstitutionally vague or overbroad "does not require scrutiny of

individual facts and circumstances but instead requires the review of abstract and generalized legal concepts"].) We conclude that the residency and employment approval condition is not facially overbroad. It is readily apparent that this condition could be constitutionally overbroad in certain circumstances, but it is equally apparent that the condition might be entirely appropriate, and constitutional, in other circumstances. There can be no dispute that certain probationers may require more intensive supervision and monitoring, as the specific facts of each case demand. For example, where a defendant's substance abuse contributed to his or her criminal conduct, preventing that defendant from living in a home where drugs are present and used would be a significant step toward ensuring that that defendant may successfully complete probation.

D. *Condition 6e—vagueness and overbreadth*

Condition 6e requires that Cardenas "[c]omply with a curfew if so directed by the P.O." Cardenas complains that this condition is both unconstitutionally vague and overbroad.[15] Like most of the other conditions that Cardenas challenges on appeal, Cardenas did not object to this condition in the trial court. He has therefore forfeited any as-applied contentions with respect to the condition. Further, we reject Cardenas's vagueness and overbreadth challenges because the record does not demonstrate that Cardenas is currently subject to any curfew. His vagueness and overbreadth challenges

---

15 Cardenas also argues that condition 6e improperly delegates the court's judicial authority to a probation officer. We address this contention later in this opinion.

to this condition are therefore premature.[16] If, in the future, Cardenas is directed to comply with a curfew, he may raise any objections to the curfew at that time.

E. *Condition 6n—vagueness and overbreadth*

Condition 6n requires that Cardenas "[s]ubmit person, vehicle, residence, property, personal effects, computers, and recordable media _____ to search at any time with or without a warrant, and with or without reasonable cause, when required by P.O. or law enforcement officer."

Cardenas argues that this condition is unconstitutionally vague because it includes a blank space after " 'recordable media.' " He interprets this blank space as an "open-ended fill-in-the blank condition." This is an unreasonable interpretation of condition 6n. The blank space exists in order to allow the court to write in any additional items that the court has determined should be subject to search and that are not included in the list provided. If the blank space is not filled in by the court, it serves no purpose and has no meaning. Contrary to Cardenas's contention, the blank space in condition 6n cannot reasonably be interpreted as giving probation officers unfettered discretion to search items beyond those listed. We therefore reject Cardenas's vagueness challenge to condition 6n.

---

16 To the extent that Cardenas is arguing that the condition is vague because it does not impose a specific curfew but instead, allows for the probation officer to do so, we reject this contention. The condition is unambiguous and does not leave him to speculate as to its requirements: it simply tells Cardenas that he must comply with a curfew if his probation officer directs him to do so. To the extent that Cardenas's issue with the condition is the fact that it permits the probation officer to decide whether to impose a curfew, that is a question of delegation.

Given Cardenas's unqualified acceptance of this probation condition in the trial court, the only challenge that he may raise to the electronic search condition on appeal is a facial challenge to the constitutionality of the condition. We therefore review solely the question whether condition 6n, the search condition, which requires Cardenas to submit his "computers" and "recordable media" to search when requested by a probation officer, is unconstitutionally facially overbroad.

We reiterate that " '[t]he essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.' [Citation.]" (*Pirali, supra*, 217 Cal.App.4th at p. 1346.) A search condition that permits unlimited searches of a probationer's computers and recordable media requires the probationer to waive his Fourth Amendment protections and thus, imposes a burden on the probationer's constitutional rights. We therefore consider whether the search condition permitting searches of a probationer's computers and/or recordable media, in the abstract, and not as applied to Cardenas, is not sufficiently narrowly tailored to the state's legitimate interest in reformation and rehabilitation of probationers in all possible applications. (See *Sheena K.*, *supra*, 40 Cal.4th at p. 885 [appellate claim that the language of a probation condition is unconstitutionally vague or facially overbroad "does not require scrutiny of individual facts and circumstances but instead requires the review of abstract and generalized legal concepts"].) When the search condition that allows searches of electronic media is viewed in this light, we

conclude that the condition is not facially overbroad. Although it is readily apparent that application of this search condition could be constitutionally overbroad in some circumstances, it is equally apparent that such a search condition may be entirely appropriate, and constitutional, in other circumstances. There can be no dispute that certain probationers may require more intensive supervision and monitoring—in particular, with respect to their use of computers and other electronic and recordable media—based on the specific facts of the case. For this reason, we reject a constitutional challenge to the search condition allowing for searches of computers and recordable media on the ground that the condition is facially overbroad.

F. *Cardenas has forfeited his appellate claims that conditions 6e, 6r, 7b, 9a, 11a, and 11b impermissibly delegate judicial authority to a probation officer*

Cardenas relies on *People v. Cervantes* (1984) 154 Cal.App.3d 353 (*Cervantes*) to argue that conditions 6e, 6r, 7b, 9a, 11a, and 11b "give 'unlimited delegation to the probation officer' to determine the terms of probation."

Again, condition 6e requires that Cardenas "[c]omply with a curfew if so directed by the P.O.," and conditions 11a and 11b require that Cardenas participate in the GPS monitoring, and comply with all zone, curfew, and equipment charging and care requirements, if he is directed by a probation officer to participate in the GPS monitoring program. Condition 6r requires that Cardenas "[p]articipate and comply with any assessment program if directed by the P.O." Condition 7b requires that Cardenas "[p]articipate in treatment, therapy, counseling, or other courses of conduct as suggested by validated assessment tests." Finally, condition 9a, which is located under the heading

"DRUG CONDITIONS," requires that Cardenas "[c]omplete a program of residential treatment and aftercare . . . if directed by the probation officer."

Cardenas argues that under condition 6e, the probation officer "has unlimited authority to decide . . . whether Mr. Cardenas will be subject to a curfew; and, . . . what the hours of the curfew will be." Cardenas contends that probation condition 6r "does not specify the type of assessment program and in what circumstances the probation officer should order participation in an assessment program." Cardenas objects that condition 7b "grants broad authority to the probation officer, or other unknown individuals, to prescribe the terms of Mr. Cardenas's probation," and effectively "allows the probation officer . . . to dictate a 'course of conduct' " for him. Cardenas complains that condition 9a "does not specify [in] what circumstances the probation officer should order participation in 'residential treatment and aftercare.' " As to all of these conditions, and also conditions 11a and 11b, Cardenas contends that "[l]ike *Cervantes*, the unlimited authority granted to the probation officer . . . improperly delegates judicial authority."

Apart from objecting to conditions 11a and 11b on other grounds, Cardenas did not object to any of these conditions on the ground that they improperly delegate judicial authority at the time the trial court imposed them. Challenges to probation conditions are typically forfeited if not raised when they are imposed (*People v. Welch* (1993) 5 Cal.4th 228, 234–235), with a narrow exception that a court may exercise its discretion to consider such challenges if they are constitutional challenges presenting pure questions of law. (*Sheena K., supra*, 40 Cal.4th at p. 885.) However, merely couching a challenge as a constitutional challenge is not a "talisman to ward off forfeiture." (*In re R.S.* (2017) 11

Cal.App.5th 239, 244.) Not " ' "all constitutional defects in conditions of probation may be raised for the first time on appeal, since there may be circumstances that do not present 'pure questions of law that can be resolved without reference to the particular sentencing record developed in the trial court.' [Citation.] In those circumstances, 'traditional objection and waiver principles encourage development of the record and a proper exercise of discretion in the trial court.' [Citation.]" [Citation.] . . . [T]he probationer should object to a perceived facial constitutional flaw at the time a probation condition initially is imposed in order to permit the trial court to consider, and if appropriate in the exercise of its informed judgment, to effect a correction.' " (*Ibid.*)

To the extent Cardenas had any concerns about the court delegating to the probation officer the authority to direct him to comply with any of these conditions, Cardenas could have, and should have, objected and asked the trial court to address those concerns at the time the conditions were imposed. Instead, he accepted these conditions to avoid imprisonment.[17] In accepting the terms of probation without raising any objection that would have allowed the trial court to address these concerns, Cardenas prevented the trial court from being able to set additional terms, or to more narrowly draw the conditions. Indeed, the court could have had legitimate reasons for leaving some of the conditions open-ended in Cardenas's case, and could have stated those

---

17 Probation is not an inherent right; it is an act of leniency (*People v. Wardlow* (1991) 227 Cal.App.3d 360, 365), the purpose of which is to serve as a "period of genuine rehabilitation" (*Griffin v. Wisconsin* (1987) 483 U.S. 868, 875). Probationers may consent to limit their constitutional rights in preference to incarceration; on the flip side, if a condition appears too onerous, a defendant may choose to serve the prison sentence instead. (*Olguin*, *supra*, 45 Cal.4th at pp. 379, 384.)

reasons on the record if Cardenas had raised an objection at the time the conditions were imposed. Specifically, the court could have related its discretionary choices to Cardenas's needs as a probationer. The purpose of the forfeiture rule is to avoid precisely the situation that we have here, where an objection would have permitted the trial court to address these concerns and/or make a better record to support the court's decisions; the forfeiture rule exists to encourage parties to bring errors to the attention of the trial court so they may be immediately corrected. (*Sheena K.*, *supra*, 40 Cal.4th at p. 881.) We conclude that Cardenas has forfeited his contentions, and we see no reason to exercise our inherent discretion to consider them despite the forfeiture.[18]

---

18 We also question the validity of Cardenas's contentions on the merits. Cardenas relies solely on *Cervantes* in support of his contentions that a number of conditions improperly delegate to the probation officer the court's authority to set the conditions of probation. However, *Cervantes* involved the delegation of the calculation of restitution; but the calculation of restitution is specifically reserved for the court, pursuant to statute. (*Cervantes*, *supra*, 154 Cal.App.3d at p. 356.) *Cervantes* does not stand for the proposition that a court may never delegate to the probation officer some decision-making authority with regard to the precise implementation of probation conditions. Leaving certain day-to-day decision-making to a probation officer often makes sense and is necessary, in fact, because the "trial court is poorly equipped to micromanage" the selection of programs or tools that assist a probationer in his or her rehabilitation. (*People v. Penoli* (1996) 46 Cal.App.4th 298, 308.)

Further, it seems apparent that under the terms of the challenged conditions, the court effectively authorized the conditions but permitted the probation officer to determine whether to implement them, depending on Cardenas's performance on probation, thereby placing Cardenas in a better position than he would have been if the court had simply imposed the conditions without allowing the probation officer to determine that such conditions were not in fact necessary for the effective supervision of the defendant. Essentially, the court has determined that Cardenas may be subjected to these conditions, and that they should be imposed. However, Cardenas may avoid having the conditions applied to him if he successfully performs on probation without them.

IV.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

McCONNELL, P. J.

GUERRERO, J.